

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM M.

Plaintiff,

v.

ACTING COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 2:23-cv-977

ORDER AFFIRMING
DEFENDANT'S DECISION TO
DENY BENEFITS

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) for judicial review of the Commissioner's denial of Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule MJR 13, the parties have consented to proceed before the undersigned Magistrate Judge. Dkt. 2.

Having considered the ALJ's decision, the administrative record (AR), and briefing, this matter is **AFFIRMED**.

I. BACKGROUND

Plaintiff filed an application for Supplemental Security Income (SSI) on September 25, 2020, alleging disability beginning July 3, 2019. AR 183. The ALJ adjusted the alleged onset date to September 25, 2020 -- the date of the application. AR 23. After the application was denied at the initial level and on reconsideration, Plaintiff requested a hearing before an Administrative Law Judge (ALJ). The ALJ held a hearing on March 10, 2022. AR 93. On March 30, 2022, the ALJ issued a decision finding Plaintiff not disabled.

1 AR 18-36.

2 The ALJ found Plaintiff had the following severe impairments: "neck and shoulder
3 pain, depressive disorder, personality disorder, posttraumatic stress disorder (PTSD),
4 alcohol abuse in remission. . ." AR 24.

5 The Appeals Council denied Plaintiff's request for review on July 18, 2023, making
6 the ALJ's decision the final decision of the Commissioner. AR 302; see 20 C.F.R. §
7 416.1481. Plaintiff appeals the denial of disability benefits to this Court. Dkt. 1.

8 I. STANDARD OF REVIEW

9 Pursuant to 42 U.S.C. § 405(g), the Court may set aside the Commissioner's denial
10 of disability benefits if it is based on legal error or not supported by substantial evidence
11 in the record. *See Woods v. Kijakazi*, 32 F.4th 785, 788 (9th Cir. 2022).

12 II. THE ALJ'S FINDINGS

13 The Commissioner follows a five-step sequential evaluation process for
14 determining whether a claimant is disabled. See 20 C.F.R. § 416.920. At steps one
15 through three, the ALJ found Plaintiff has not engaged in substantial gainful activity since
16 the application date, has one or more severe impairments, and does not have an
17 impairment or combination of impairments that meet or equal the criteria of a listed
18 impairment. AR 24-25.

19 At step four, the ALJ found Plaintiff has the residual functional capacity (RFC) to
20 perform light work, as defined in 20 C.F.R. § 416.967(b), with the following limitations:

21 He can occasionally stoop. He cannot crouch, crawl, kneel, or
22 climb ramps, stairs, ropes, ladders, scaffolds, work at heights,
23 or in proximity to hazardous conditions. He can occasionally
24 overhead reach, frequently reach at or below shoulder level,
25 and frequent handle and finger. He can remember,
understand, and carry out simple and routine instructions and

1 tasks consistent with the learning and training requirements of
2 SVP level one and two jobs with reasoning levels of two or
3 less. He can have no contact with the public. He can have
4 occasional contact with supervisors. He can work in proximity
5 to but not in coordination with co-workers.

6 AR 28.

7 With that assessment, the ALJ found Plaintiff unable to perform any past relevant
8 work. AR 34. The ALJ proceeded to step five and found there are jobs that exist in
9 significant numbers that the Plaintiff can perform. AR 35. The ALJ thus concluded Plaintiff
10 has not been under a disability since the date the application was filed. AR 36.

11 III. DISCUSSION

12 Plaintiff raises one issue on appeal – whether the ALJ properly evaluated the opinion
13 of Rochelle Nucci, Plaintiff's mental health counselor at Sound Mental Health.

14 On January 6, 2021, Ms. Nucci provided a statement. AR 704. She states that
15 since she started seeing Plaintiff as his counselor in March 2020, she learned about
16 Plaintiff's abusive mother and her mental health history, and his experience with an
17 assault several years prior. *See id.* Since the assault, Plaintiff informed Ms. Nucci that
18 he was experiencing nightmares, flashbacks, panic attacks, and memory issues. *See id.*
19 Ms. Nucci opined that Plaintiff had difficulty completing activities due to his "extreme
20 lack of focus and his poor short-term memory." *See id.* For example, he has forgotten
21 laundry in the laundry room for days and has left money at random locations. *See id.*
22 Ms. Nucci stated that it is "abundantly clear" that Plaintiff "will never be able to have
23 regular job" and she ultimately believes that Plaintiff is someone "that definitely should
24 be receiving social security benefits". AR 705.

1 The ALJ found Ms. Nucci's opinion unpersuasive because the "ultimate issue of
2 whether someone is disabled or not is reserved to the Commissioner." AR 34. See *also*
3 20 C.F.R. 416.920(c). Furthermore, the ALJ stated Ms. Nucci relied on Plaintiff's
4 subjective reports of symptoms and examples of problems with his activities of daily
5 living during the time when the claimant admittedly is not taking any of the prescribed
6 antipsychotic medications. AR 34.

7 Plaintiff argues the ALJ erred because the ALJ rejected Ms. Nucci's opinion
8 without considering its supportability and consistency. Dkt. 9, p. 3.

9 Defendant argues that what Ms. Nucci's opinion, to the extent it contains
10 statements on issues reserved to the Commissioner, was appropriately not considered
11 by the ALJ. See Dkt. 14, p. 2. See *id.*

12 Under the applicable rules, the ALJ must "articulate how [they] considered the
13 medical opinions" and "how persuasive [they] find[s] all of the medical opinions" by
14 considering their supportability, consistency, relationship with the claimant,
15 specialization, and other factors. 20 C.F.R. §§ 404.152c(c), 416.920c(c). A "medical
16 opinion" is defined under 20 CFR § 416.913(a)(2) as: "a statement from a medical
17 source about what you can still do despite your impairment(s) and whether you have
18 one or more impairment-related limitations or restrictions in the abilities [listed in sub-
19 paragraph (a)(2)(i) of the regulation]". With respect to mental health conditions, a
20 medical opinion consists of: "impairment-related limitations and restrictions in: . . .
21 [y]our ability to perform mental demands of work activities, such as understanding;
22 remembering; maintaining concentration, persistence, or pace; carrying out instructions;
23 or responding appropriately to supervision, co-workers, or work pressures in a work
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1 setting. . . ." 20 CFR § 416.913 (a)(2)(i)(B). Under 20 CFR § 416.920, the Commissioner
2 "will consider all evidence in your case record when we make a determination or
3 decision whether you are disabled." When considering severity of mental impairments,
4 the Commissioner follows a technique described in 20 CFR § 416.920a.

5 The ALJ is specifically required to consider the two most important factors,
6 supportability and consistency. 20 C.F.R. §§ 404.1520c(a), 416.920c(a). The
7 supportability factor requires the ALJ to consider the relevance of the objective medical
8 evidence and the supporting explanations presented by the medical source to justify
9 their opinion. 20 C.F.R. §§ 404.1520c(c)(1), 416.920c(c)(1). The consistency factor
10 involves consideration of how consistent a medical opinion is with the other record
11 evidence. 20 C.F.R. §§ 404.1520c(c)(2), 416.920c(c)(2).

12 Under the 2017 regulations, "an ALJ cannot reject an examining or treating
13 doctor's opinion as unsupported or inconsistent without providing an explanation
14 supported by substantial evidence." *Woods*, 32 F.4th at 792. On the other hand, an ALJ
15 need not provide analysis if the evidence is "neither valuable nor persuasive to the
16 issue," such as decisions by other governmental agencies and nongovernmental
17 entities," and "statements on issues reserved to the Commissioner." See 20 C.F.R. §
18 416.920b(c)(1)-(2).

19 With respect to Plaintiff's unwillingness to engage with treatment
20 recommendations, the Ninth Circuit held "it is a questionable practice to chastise one
21 with a mental impairment for the exercise of poor judgment in seeking rehabilitation."
22 *Garrison v. Colvin*, 759 F.3d 995, 1018 n.24 (9th Cir. 2014) (quoting *Nguyen v. Chater*,
23 100 F.3d 1462, 1465 (9th Cir. 1996)). While there are many instances in the record
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1 where it appears Plaintiff was unwilling to take prescribed medications or purposely did
2 not pick up his prescriptions, there does appear to be evidence in the record that his
3 decision not to take the prescribed medication was “at least in part a result of his ...
4 psychiatric issues.” *Id.* See AR 432 (Plaintiff “reports mother died by OD on pills and
5 alcohol.”). The Court, therefore, finds that the ALJ erred in relying on Plaintiff’s
6 unwillingness to engage with treatment recommendations.

7 The ALJ considered Ms. Nucci’s opinion but found it unpersuasive. AR 27, 34.
8 The ALJ properly rejected the portion of the opinion stating that it was “abundantly
9 clear” that Plaintiff would “never be able to have a regular job” and that he “definitely
10 should be receiving social security benefits.” AR 34, referring to AR 705. Statements
11 regarding how a claimant is or is not “disabled, blind, able to work, or able to perform
12 regular or continuing work” are statements on issues reserved to the Commissioner, not
13 medical opinions. See AR 318-19; 20 C.F.R. § 416.920b(c)(3)(i).

14 Plaintiff argues that Ms. Nucci’s treatment notes contain clinical observations that
15 support the opinions and therefore the opinions should not be overlooked. Dkt. 9 at p. 6-
16 7. The opinion did not expressly provide a clinical basis – such as psychological testing
17 – nor did it provide an explanation tied to clinical findings for the assessment of
18 Plaintiff’s ability “to perform mental demands of work activities, such as understanding;
19 remembering; maintaining concentration, persistence, or pace; carrying out instructions;
20 or responding appropriately to supervision, co-workers, or work pressures in a work
21 setting.” 20 C.F.R. § 416.913(a)(i)(B). The ALJ’s reasons concerning the lack of
22 objective clinical findings are valid and are supported by substantial evidence. See,
23 *Morgan v. Comm’r Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999) (claimant’s
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1 mental health symptoms were noted by treating physician, but the reports failed to
2 explain how the symptoms translated into specific functional limitations that would
3 preclude work activity).

4 An error that is inconsequential to the non-disability determination is harmless.
5 *Stout v. v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006)). If the errors
6 of the ALJ result in a residual functional capacity (RFC) that does not include relevant
7 work-related limitations, the RFC is deficient, and the error is not harmless. *Id*; *Embrey*
8 *v. Bowen*, 849 F.2d 418, 422-423 (9th Cir. 1988); *Stramol-Spirz v. Saul*, 848 Fed. Appx.
9 715, 718 (9th Cir. 2021) (unpublished).

10 During the hearing, Plaintiff's attorney asked the Vocational Expert whether
11 "instead of occasional supervisory contact or proximity to coworkers, there was no
12 ability to work with supervisors or coworkers?", and the V.E. responded, "[t]hat would be
13 inconsistent with any jobs at the unskilled level." AR 122. Plaintiff's attorney also asked,
14 "If you were to add to the first hypothetical that this person would require redirection
15 throughout the workday, about 30 percent of an eight-hour workday, how would that
16 affect the jobs at Step 5?" *Id*. The V.E. stated, "I think that would be in excess of what is
17 typically provided and it probably would affect their – the degree of being off task. So I
18 think that would probably be inconsistent with those jobs." *Id*.

19 The ALJ was not required to include in the RFC the limitations suggested by
20 Plaintiff's counsel, because the questions appear to be based on counselor Nucci's
21 assessment, and ALJ gave at least one legally sufficient reason, supported by
22 substantial evidence, to discount the medical opinion of mental health counselor Nucci.
23 The error with respect to Plaintiff's failure to follow treatment recommendations was
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1 therefore harmless. Plaintiff has not established harmful error on this point, because the
2 Court may affirm, based on one legally sufficient and supported reason. *Batson v.*
3 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004).

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5 CONCLUSION

6 Based on the foregoing discussion, the Court concludes the ALJ properly
7 determined Plaintiff to be not disabled. Therefore, the ALJ's decision is AFFIRMED.

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9 Dated this 22nd day of April, 2024.

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11 Theresa L. Fricke
12 United States Magistrate Judge

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